IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 960 OF 2003

IN

SUMMARY SUIT NO.1840 OF 2003

Dilip V. Mehta ....**Plffs.**
vs.
M/s. Lupin Ltd .....**Defnds.**

Mr. D.A. Barot with Miss. D.P. Dosmia for the plaintiffs.

Mr. Puranik i/b. Puranik and Co. for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 22ND AUGUST 2005.

P.C. :

1. The present suit is filed for the goods sold and delivered being ball pens to the defendants. The defendant has made part payments and refused to make the balance payment

and therefore the present suit is filed for the recovery of Rs.1,60,000/- with interest on the principal amount of Rs.30770/-. The defence sought to be raised in the present suit is that the goods were defective. It has been contended that the ball pens were distributed to various persons and they have complained that the ball pens are not writing properly and therefore they are defective. Admittedly neither the goods were neither returned back to the plaintiffs. Further the defendant purported to rely upon certain correspondence exchanged between the parties at the earlier stage. I am of the opinion that in the present suit the defendants defence is not bonafide. The goods are merely the ball pens. Admittedly they are distributed to various doctors. The defence of defective goods raised is without any substance. The goods are not returned back,. In that view of the matter the case of the defendant cannot be accepted. However with a view to give an opportunity to the defendant to defend the suit I pass the following order :

(i) Defendant to deposit a sum of Rs.1,50,000/- within a period of four weeks from today.

(ii) If the defendant fails to deposit the amount as aforestated, plaintiff will be entitled to decree.

(iii) If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes. The office is directed to

invest the amount if deposited in fixed deposit for a period of three years with any nationalised bank and renew the same from time to time till further orders.

sd/-

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